IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

Crl.MC.No. 1465 of 2004(A)

CC.1336/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER: 2ND ACCUSED.

MRS.KANAKAMANI AMMA, W/O.KARUAKARAN
PILLAI, NILAKKAL VADAKKETHIL VEETTIL,
BHARANIKKAVU VILLAGE, MAVELIKKARA TALUK, NOW
R/A. AT CHITHIRA HOUSE, KALAMASSERY, ERNAKULAM.

BY ADV. SRI.MANUEL THOMAS
SRI.SAJI.P.JOSEPH

RESPONDENTS: COMPLAINANT.

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1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. MANOJ KUMAR, S/O.MADHAVAN PILLAI,
MOODAYIL PUTHEN VEETTIL, KANJOOR,
CHEPPADU P.O. ALAPPUZHA 690 507.

3. MADHAVAN PILLAI, S/O.SANKARAN PILLAI,
MOODAYIL PUTHEN VEETTIL, KANJOOR, CHEPPADU PO,
ALAPPUZHA DIST. 690 507.

R2 & R3 BY ADV. SRI.P.VIJAYA BHANU &
SMT.P.MAYA
R1 BY PUBLIC PROSECUTOR SRI PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 6-12-2006, ALONG WITH CRMC NO. 2291 OF 2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL M.C. NOS. 1465/2004 & 2291/2005

Dated 6TH day of December, 2006

ORDER

Petitioners in both the matters are the accused in C.C.1336/2003 of the JFCM-II, Alwaye and in C.C.No.875/2004 of the JFCM, Kayamkulam for the offences under sections 417, 420 read with 34 IPC on the allegation that the accused persons promising job to the 2nd respondent as A.S.I. in CISF collected an amount of Rs.1,15,000/- from respondents 2 and 3, son and father, on various days from 10-6-95 to 7-10-96 and did not arrange the job nor returned the money. The contention of the petitioners is that both the cases are with respect to the same incident and hence there is duplicity and the same is barred under Article 20(2) of the Constitution of India. It is also the contention that the second petitioner who is the wife of the Ist petitioner is unnecessarily dragged into the proceedings as there is no allegations against the 2nd petitioner in the complaint filed in C.C.1336/2003 which is now pending before the JFCM-II, Aluva.

2. The respondents/de facto complainants have opposed the petition.

3. On a perusal of the documents produced , I find that the proceedings initiated in the court of JFCM- Kayamkulam as C.C.875/2004 is with respect to the same incidents and on the same allegations. Hence, evidently, the proceedings in C.C.875/2004 pending before the JFCM Kayamkulam cannot be sustained as the same would amount to double jeopardy.

4. So far as the contention that the second accused in C.C.1336/2003 is totally innocent and she has been implicated only because she happened to be the wife of the 2nd petitioner and that there are no allegations in the complaint submitted by the de facto complainants before the D.I.G., Ernakulam on the basis of which the crime has been registered, I find that the contention cannot be upheld. Although there is no specific recital implicating the 2nd petitioner in annexure A1, the complaint submitted before the Dy.Inspector General, Ernakulam, during investigation, the statements recorded show that the allegations are made both against the Ist petitioner as well as the 2nd petitioner. In the circumstances, I find no reason

to quash the proceedings against the 2nd petitioner (Crl.M.C.2291/05).

In the result, Crl.M.C.2291/2005 is allowed and the proceedings C.C.875/2004 in the court of JFCM, Kayamkulam is herewith quashed. Crl.M.C.1465/2004 is dismissed.

K.R.UDAYABHANU,JUDGE.

kvm/-